

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE, AT NASHVILLE

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MAY 31 2007

NISSAN NORTH AMERICA, INC.,

Plaintiff,

v.

SDM AUTOMOTIVE, LLC,

Defendant.

U.S. DISTRICT COURT
MID. DIST. TENN.

Case No. 3 07 0601

JUDGE TRAUGER

~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER, SETTING
PRELIMINARY INJUNCTION HEARING, AND
GRANTING MOTION FOR EXPEDITED DISCOVERY

This cause came to be heard on this day, and it appearing from the Verified Complaint that the rights of the Plaintiff are being or will be violated by the Defendant and that the Plaintiff will suffer immediate and irreparable injury, loss or damage before a hearing may be had on the Motion for Preliminary Injunction;

IT IS, THEREFORE, ORDERED that upon Plaintiff executing a bond in the amount of \$5,000, the Defendant, SDM Automotive, LLC, and all the persons acting in concert and in participation with it, are restrained, pursuant to Rule 65, Federal Rules of Civil Procedure, from making any unauthorized use of Plaintiff's INFINITI marks or any mark that is similar in appearance to the INFINITI marks: (1) as part of any trademark, service mark, trade name, corporate name, or assumed name; (2) as part of any internet domain name, title, description, key words, source codes, tags, meta tags, banners, links, email addresses, and any other use for the purpose of directing Internet traffic; and (3) as part of any and all websites and promotional materials, save that the INFINITI marks may be used in a nominative manner to identify Nissan's Infiniti-branded vehicles.

Nissan has demonstrated a likelihood of success on the merits in showing that the Defendant's unauthorized use of the INFINITI marks on Defendant's website violates Nissan's trademark rights under the Lanham Act and the Anticybersquatting Consumer Protection Act. The Court further finds that Nissan has demonstrated that the continuation of Defendant's acts would cause substantial injury to Nissan, its business reputation and goodwill. The Court finds that such harm to Nissan is irreparable and outweighs any possible harm which may result to Defendant from the issuance of a temporary restraining order.

It is further ORDERED that this Court will conduct a hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and on _____, 2007, at _____, ____m., and it is further *to be decided by Judge Thurgood*

ORDERED that all parties must appear at that hearing personally or through their counsel, and it is further

ORDERED that the parties may file any papers in further support of or opposition to the Motion for Temporary Restraining Order and Preliminary Injunction on or before

to be decided by Judge Thurgood, 2007 at _____, ____m., and it is further

ORDERED that Plaintiff's Motion For Expedited Discovery related to the Preliminary Injunction is GRANTED, and it is further

ORDERED that Steve Burhans, the Managing Director of the Defendant, and, if necessary, that corporate representatives designated by Defendant pursuant to Fed. R. Civ. P. 30(b)(6) shall appear at oral depositions on dates and at times and at a place mutually convenient to all parties, provided that Plaintiff serves Defendant with a Notice of Deposition on at least

five ~~three~~ (5) days' notice, and it is further

ORDERED that Defendants produce before or at the depositions, copies of the following documents:

1. All documents pertaining to the Defendant's use of the INFINITI marks on the website located at the <infinitibids.com> domain name, including but not limited to the registration of the website;

2. Any correspondence, including letters, emails and/or facsimiles sent or received by Defendant, its agents or employees, pertaining to Plaintiff, its INFINITI marks, its customers or employees, or any of its prospective employees or customers;

3. All emails sent or received at the info@infinitibids.com email address, or at any other email addresses in part using "@infinitibids.com";

4. Documents sufficient to identify all products, literature, signs, labels, tags, prints, packages, wrappers, containers, fabrics, advertising materials, stationery, and any other items in Defendants' possession or control that bear InfinitiBids™, the INFINITI marks, or any derivation thereof;

5. Documents sufficient to identify all dealers and purchasers or prospective purchasers of Infiniti vehicles who have joined <infinitibids.com>, participated in a demonstration of the site, or received promotional materials from the Defendant advertising the site; and

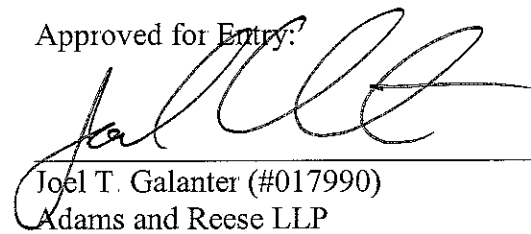
6. Documents sufficient to disclose all sales, revenues, and profits attributable to use or operation of the website located at the <infinitibids.com> domain name.

IT IS SO ORDERED


JUDGE

4:37 PM
Central Standard Time

Approved for Entry:


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